



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/1007

Re: Property at 17 Cleghorn Street, G/L, Dundee, DD2 2NQ (“the Property”)

Parties:

Mr Richard Borland, 15 Camphill Road, Broughty Ferry, Dundee, DD5 2JB (“the Applicant”)

Miss Heidi Smith, 17 Cleghorn Street, G/L, Dundee, DD2 2NQ (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should grant an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Background

1. An application was received under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking recovery of possession under a private residential tenancy by the Applicant against the Respondent for the Property.
2. The application contained: -

- a. a copy of the tenancy agreement,
 - b. a copy of the notice to leave with evidence of service
 - c. a copy section 11 Notice
 - d. email exchanges between the applicant's lawyers and letting property services.
3. The Applicant's agent, Mr Kemp from Thorntons Law LLP appeared. There was no appearance by the respondent. Service of the application had been made by sheriff officers on 30 June 2022. The tribunal was prepared to proceed with the application in her absence.

Discussion

4. The Applicant's agent advised that he was seeking an order for recovery of the possession of the property under the ground 1 (intention to sell). The tribunal had before it the application and written evidence in support of the application.
5. The applicant's agent advised that the notice to leave had been served under this ground in August 2021, he had checked the position yesterday, and he advised that it was still the case that the applicant intended to sell the property. He referred to the exchange of emails between his firm and the letting agents confirming that the property would be sold. He confirmed that his firm did not enter contracts to sell properties until they had attended at the premises and conducted a sales appraisal and had prepared a property schedule.
6. He advised in relation to the issue of reasonableness it appeared that the respondent may not be living in the property. In January 2022 the police had been called to the property by neighbours as the front door had been kicked in, when they entered they noted that : the property was in a poor condition; there may have been some drug use in it; and it appeared to the police that no one may have been living there, although they had considered that people had been frequenting recently, as the TV had been on standby.

7. The letting agent had tried to speak to the tenant and her mother on a number of occasions about the property and accessing it, but there had been no contact at all, until recently (in July 2022) when the tenant's mother had been in touch to advise that her daughter would be leaving it and would hand the keys back. He advised that this date coincided with the service of the application on the tenant. He advised that given the history with this tenant, the landlord wished to secure an order for eviction in the event that the tenant did not return the keys. He submitted that it appeared that the tenant was accessing the property even if not living in it. The letting agents had been making efforts to get into the property since last August to no avail. He advised that the condition of the property was poor. The tenant had lived in the property alone, she had no dependents.

8. He advised that the applicant wished to sell the property as although he did have other properties, due to the covid pandemic, this had led to financial issues which had meant that he needed to sell this property to free up some capital.

Findings in Fact

9. The Tribunal found the following facts established: -
 - a. There existed a private residential tenancy between the Applicant and the Respondent. It had commenced on 31 August 2020
 - b. The tenant was Heidi Smith
 - c. The landlord was Richard Boland
 - d. The property was 17 Cleghorn Street, GL, Dundee.
 - e. There was a notice to leave dated 27 August 2021, stating that an application would not be made until 1 March 2022. It sought eviction under ground 1 - the landlord intends to sell the property.
 - f. The notice to leave had been emailed to the tenant's email address (as set out in the tenancy agreement) on 27 August 2021.

- g. A section 11 notice had been sent to the local authority advising that the landlord was seeking possession of the property. It had been sent on 6 April 2022.
- h. There was email correspondence dated 23 August 2022 from Thorntons Law LLP to the letting agents seeking access to the property and advising that they had been instructed to act in the sale of the property.
- i. Thorntons Law LLP were instructed to sell the property at 8 August 2022.

Reasons for Decision

10. Section 51 of the 2016 Act provides the Tribunal with a power to grant an order for eviction for a private residential tenancy, if it finds that one of the grounds in schedule 3 of the Act applies.
11. The ground which the Applicant seeks eviction under is ground 1. It is in the following terms :-

1 Landlord intends to sell

- (1) It is an eviction ground that the landlord intends to sell the let property.
- (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord— (a) is entitled to sell the let property, and (b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it.
- (3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)— (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property, (b) a recently prepared document that anyone responsible for marketing the let property

would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

12. The Respondent did not appear at the case management discussion. The Applicant's agent appeared. The tribunal had sight of the land certificate for the property, this showed that the applicant was a joint owner of the property, he therefore appeared to have the right to proceed to sell it. The applicant's agent advised that they had been instructed to act in the sale and marketing of the property. While there was limited documentary evidence provided in support of the sale, the agent was able to confirm the practice of their firm that they did not issue a terms of business letter until they had carried out a market appraisal of the subjects. He advised that to date they had not been able to get access to the property to do the sales appraisal. The agents had confirmed their practice in an email to the tribunal office and orally at this case management discussion. The agent was also able to confirm that his firm remained instructed in the sale of the property. The tribunal found the requirements of ground 1 to be met.
13. The tribunal then proceeded to consider if it would be reasonable to grant the order. We note that the respondent may no longer be living in the property. We note that it is in a poor condition. We note that the police have had to attend at the property, and they had noted the poor state of the property. We also note that the tenant and her mother had failed to respond to any requests by the letting agents or the lawyers instructed in the sale to contact them. We note that the only contact which has taken place was in July 2022, when the tenant most likely had received notice of this hearing and her mother had contacted the letting agent to say her daughter would be handing the tenancy back. We note the tenant has no dependents living in the property.
14. We note that the landlord circumstances are that he has other properties which he rents out, but wishes to sell this property to release some capital due to changes in his situation caused by the covid pandemic.

15. We are aware of no mitigation for the respondent which would lead us to consider refusing this order. Further, we consider that there are a number of reasons in relation to the respondent's use of the property which would support the tribunal concluding that it would be reasonable to grant an order for eviction under this ground. We determine therefore that it would be reasonable to grant the order for eviction.

Decision

16. The Tribunal grants an order in favour of the Applicant against the Respondent for recovery of possession of the private residential tenancy under ground 1 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.


Melanie Barbour

8 August 2022

Legal Member/Chair

Date